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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947
No. 714

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

Petitioners,

vs.

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Respondents.

Brief of Respondents the International Alliance, etc., and Roy M. Brewer in Opposition to Petition for a Writ of Certiorari.

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Respondents.

Brief of Respondents the International Alliance, etc., and Roy M. Brewer in Opposition to Petition for a Writ of Certiorari.

Statement of the Case.

Judge Ben Harrison, in his Memorandum of Opinion [R. 122, 70 Fed. Supp. 1008-1009], correctly and succinctly stated the issue presented to the District Court below as follows:

> "The forty-eight page complaint when analyzed presents nothing more or less than a request that this

court interpret a private contract or agreement allocating certain work on stage sets in the moving picture industry. As stated by counsel in oral argument, the difference between the parties is simply who is 'to drive the nails.' The serious question before the court is whether this court has jurisdiction in the absence of diversity of citizenship."

The labor organizations involved in this litigation, with the exception of defendant Conference of Studio Unions, hereinafter called CSU, are affiliated with the American Federation of Labor [R. 8]. Petitioners and the persons whom they purport to represent are members of the United Brotherhood of Carpenters and Joiners of America, hereinafter referred to as Carpenters. Defendant CSU is an organization of local unions of various crafts comprising members employed, during periods referred to in the complaint, by the motion picture industry in Hollywood, and among its members are Local 946 of the Carpenters [R. 5] and Local 1421 of Brotherhood of Painters, Decorators and Paperhangers of America, hereinafter called the Painters [R. 73-76].

Respondent The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, sometimes referred to in the record herein as the Stagehands, but hereinafter called The Alliance, a voluntary unincorporated association, is an international labor union having approximately 800 constitutent locals, 14 of which, with a membership in excess of 15,000, being situated in the Hollywood area, and all of the members of said last mentioned locals are employed by respondents Motion Picture Companies, hereinafter called The Studios, in the production of motion picture films [R. 4, 72-73]. Respondent Roy M. Brewer

is International Representative of The Alliance. Neither The Alliance nor any of its constituent locals are members of CSU [R. 75].

On March 12, 1945, Local 1421, situated in Hollywood and chartered by the Painters, with members then working in The Studios, declared a strike as a result of a jurisdictional controversy between it and The Alliance as to which organization had jurisdiction over a small group of Set Decorators employed in The Studios [R. 62-63]. The various labor organizations constituting the membership of CSU joined Local 1421 in this strike; The Alliance took the position that the strike, while ostensibly against The Studios, was actually a jurisdictional strike against The Alliance and that it constituted an attempt on the part of Local 946 of the Carpenters and other labor organizations, members of CSU, to obtain jurisdiction over certain work classifications which The Alliance believed properly belonged to it. As a result, members of The Alliance continued their work in The Studios and same were thus enabled to remain open [R. 61, 76-77].

In October, 1945, while the strike was in progress, all of the interested labor organizations, The Studios, and the Executive Council of the American Federation of Labor, entered into an agreement, known as the Cincinnati Agreement, by which it was provided that the strike be terminated and all employees return to work immediately, that for a period of thirty days the international unions affected make every attempt to settle the jurisdictional questions involved in the dispute, and "that after the expiration of thirty days a committee of three members of the Executive Council of the American Federation of Labor shall investigate and determine within thirty days all jurisdictional questions still involved." It was further pro-

vided "that all parties concerned . . . accept as final and binding such decisions and determinations as the Executive Council committee of three may finally render," and that "all parties agreed to accept the decision of the committee and to be bound thereby." [R. 42, 43.]

At the end of the first thirty-day period provided for in the Cincinnati Agreement, certain jurisdictional disputes remained unresolved. The committee of three members of the Executive Council of the American Federation of Labor held hearings and on December 26, 1945, rendered its decision. By this decision jurisdiction over "erection of sets on stages" was allocated to The Alliance [R. 54-55] and jurisdiction over "all trim and mill-work on sets and stages" was allocated to the Carpenters [R. 15, 54]. In January, 1946, The Studios, pursuant to the decision of the Three-Man Committee, allocated the work of erecting sets on stages to members of The Alliance, with the result, it is alleged, that members of Local 946 of the Carpenters who had been doing such work were supplanted [R. 16-17]. On August 16, 1946, the Three-Man Committee of the Executive Council of the American Federation of Labor issued a purported "clarification" of its December 26, 1945, decision, in which it was stated "the word erection is construed to mean assemblage of such sets on stages or locations." [R. 18.] If the terms of this "clarification" were put into effect by The Studios, it would mean that the work of erection of sets on stages, being performed by members of The Alliance, would be taken away from them and given to members of Local

946 of the Carpenters. The Alliance contended that "the so-called 'clarification' was issued without authority and in violation of the Cincinnati Agreement" to which The Alliance, The Studios, and the other International Unions involved were all parties, pointing out that "the Cincinnati Agreement in making provision for the creation of the three man committee, specifically provided that the parties thereto accept the Committee's decision as final and binding." [R. 25-26.] The Studios concurred with the position so taken by The Alliance [R. 16]. On September 26, 1946, Local 946 of the Carpenters declared a strike against all of the major Studios, which strike was for the purpose of compelling The Studios to recognize as valid and binding the so-called "clarification" and take away from The Alliance jurisdiction over the erection of sets and grant such jurisdiction to said Local 946. Such strike at the time this action was instituted was still in progress, and such of the petitioners, and those whom they purport to represent, who were working for the major Studios, all of whom are members of said Local 946, joined therein.

It is the contention of The Alliance that the decision of the Three-Man Committee rendered on December 26, 1945, is valid and binding on all parties and that the so-called "clarification" is invalid and a nullity, whereas petitioners, and the persons whom they purport to represent, contend that the December 26, 1945, decision has been superseded by the so-called "clarification." As the District Judge well said:

> "Thus, we have an action in which private individuals ask this court to construe their rights under

> a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." [R. 122-123.]

and

> "The only important issue in the case at bar is the interpretation of a contract. The meaning of this contract is not dependent on the National Labor Relations Act, whether it owes its existence to that Act or not. A decision by this Court that the Carpenters or the Stagehands, as the case may be, have the right to construct stage sets would not involve consideration of the validity, construction, or effect of the Act. The decision would be based purely and simply upon contractual principles. Therefore, this suit does not arise under the Constitution or laws of the United States, and this Court lacks jurisdiction." [R. 127-128.]

It thus appears that the sole controversy presented to the District Court below was a jurisdictional dispute between two labor organizations arising out of a series of contracts, awards, and decisions, with respect to which petitioners sought declaratory relief. It is conceded by petitioners and affirmatively appears from the amended complaint that diversity of citizenship does not exist.

ARGUMENT.

I.

A Case Does Not Arise "Under the Constitution or Laws of the United States" Unless It Involves a Real and Substantial Dispute Respecting the Validity, Construction, or Effect of the Constitution or Such Laws, Upon the Determination of Which the Result Depends.

Shulthis v. McDougal, 225 U. S. 561, 569, 56 L. Ed. 1205, 1211:

> "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends."

Gully v. First National Bank, 299 U. S. 109, 112, 81 L. Ed. 70, 72:

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. (Citing cases.) *The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another.*"

The District Court, recognizing and applying the foregoing rule, held adversely to the contention of petitioners that the controversy set forth in amended complaint arose "under the Constitution or laws of the United States."

II.

District Courts of the United States, in the Absence of Diversity of Citizenship, Do Not Have Jurisdiction to Adjudicate, in Private Suits Between Individuals, Contractual Rights or Jurisdictional Controversies Between Competing Labor Organizations; Such Controversies Do Not "Arise" Under the National Labor Relations Act, nor Under "Any Law Regulating Commerce."

Compelling authority to the effect that an action for declaratory judgment as to rights under a contract executed as a result of negotiations under the National Labor Relations Act is not an action arising under any Federal statute may be found in the decisions of this Court relating to actions brought for declaratory relief with respect to contracts negotiated pursuant to the provisions of the Railway Labor Act. Decisions under the Railway Labor Act are clearly in point because that Act, like the National Labor Relations Act, requires that negotiations be had for the purpose of arriving at a contract. Section 7 of the National Labor Relations Act (U. S. C. A., Title 29, Sec. 157) may be compared, as follows, with Section 4, Railway Labor Act (U. S. C. A., Title 45, Sec. 152):

National Labor Relations Act, Section 7 (U. S. C. A., Title 29, Sec. 157):

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Railway Labor Act, Section Fourth (U. S. C. A., Title 45, Sec. 152):

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. . . ."

In *General Committee, etc., v. Southern Pacific Co.*, 320 U. S. 338, 88 L. Ed. 85, this Court, at pages 87 and 88 of 88 L. Ed., and at pages 343 and 344 of 320 U. S., has this to say concerning jurisdictional controversies between competing labor unions:

> "We are concerned only with a problem of representation of employees before the carriers on certain types of grievances which, though affecting individuals, present a dispute like the one at issue in the Missouri-Kansas-Texas R. Co. Case. *It involves, that is to say, a jurisdictional controversy between two unions.*[1] It raises the question whether one collective bargaining agent or the other is the proper representative for the presentation of certain claims to the employer. *It involves a determination of the point where the exclusive jurisdiction of one craft ends and where the authority of another craft begins. For the reasons stated in our opinions in the Missouri-Kansas-Texas R. Co. Case and in the Switchmen's Union of N. A. Case, we believe that Congress left the so-called jurisdictional controversies between unions to agencies or tribunals other than the courts. We see no reason for differentiating this jurisdictional dispute from the others.*"

In *General Committee, etc., v. Missouri-K.-T. R. Co.* 320 U. S. 323, 88 L. Ed. 76, this Court, at pages 83 and 84 of 88 L. Ed., and at pages 336 and 337 of 320 U. S., stated:

> "It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. *It involves a jurisdic-*

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[1]Italics appearing in this brief are ours, unless otherwise indicated.

tional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have joint authority."

In the course of its decision in the last above cited case, this Court, referring to its decision in the *Virginian Ry. Co. Case* (300 U. S. 548, 81 L. Ed. 799) and to the Railway Labor Act, stated:

"But the decision does not imply, as is argued here, that every representation problem arising under the Act, presents a justiciable controversy. *It does not suggest that the respective domains for two or more overlapping crafts should be litigated in the federal district courts.*

"It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts."

* * * * * * * *

"We are here concerned solely with legal rights under this federal Act which are enforcible by courts. For unless such a right is found it is apparent that this is not a suit or proceeding 'arising under any law regulating commerce' over which the District Court had original jurisdiction by reason of Sec. 24(8) of the Judicial Code, 28 USCA Sec. 41(8), 7 FCS Title 28, Sec. 41(8). [Citing cases.] When a court has jurisdiction it has of course 'authority to decide the case either way.' *The Fair v. Kohler Die & Specialty Co.*, 228 U. S. 22, 25, 57 L. ed. 716, 717, 33 S. Ct. 410. But in this case no declaratory decree should have been entered for the benefit of any of the parties. Any decision on the merits would involve the

granting of judicial remedies which Congress chose not to confer."

Petitioners urge that the District Court had jurisdiction on the ground that this action arises under the National Labor Relations Act. (29 U. S. C. A., Sec. 150 *et seq.*) Petitioners rely upon Section 7 of that Act (Sec. 157 of Title 29, U. S. C. A.), which section we have above set forth verbatim.

The complaint herein, however, does not allege any violation of the foregoing section. Even if it be assumed that the complaint did allege such a violation, the District Court would nevertheless be without jurisdiction, for the National Labor Relations Act, as it existed at the time this ligitation was instituted, provided that the National Labor Relations Board should have exclusive power to enforce rights guaranteed by that Act to employees, subject only to review by the proper Circuit Court of Appeals. Thus Section 10(a) of the National Labor Relations Act (29 U. S. C. A., Sec. 160(a)) reads as follows:

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

It is settled, moreover, that rights and obligations of employers and employees under executed labor agreements do not "arise" under the National Labor Relations Act within the meaning of Article III, Section 2, Subdivision 1 of the Federal Constitution, even though such agree-

ments were arrived at in conformity with the provisions of that Act. The Act does not provide for the interpretation or enforcement of agreements, but provides only for negotiations in good faith looking to agreements. Thus, *Blankenship v. Kurfman* (C. C. A. 7), 96 F. (2d) 450, involved an action by members of a union to enjoin another union from interfering with a contract between their union and their employer. With respect to the contention of the plaintiffs therein that federal jurisdiction was present on the ground that the case arose under the provisions of the National Labor Relations Act, the court held as follows:

> "The proposition of the plaintiffs that the effect of the National Labor Relations Act, especially Sections 157 and 159(a) of Title 29, U. S. C. A., is to create a federal right, the violation of which by the defendants entitles plaintiffs to injunctive relief, is untenable.
>
> . . .
>
> "The general purpose of the National Labor Relations Act is to provide methods of preventing or eliminating certain 'unfair practices' which have heretofore characterized the relation of employer and employee, and which have obstructed, or tended to obstruct, the free flow of commerce. The act creates certain rights and duties as between employer and employee and provides the procedure necessary to give effect thereto. *It seems clear that the only rights which are made enforceable by the Act are those which have been determined by the National Labor Relations Board to exist under the facts of each case; and when these rights have been determined, the method of enforcing them which is provided by the Act itself must be followed. And we find no provision in the Act which can be construed as intending to create rights for employees which can be enforced*

in federal courts independently of action by the National Labor Relations Board. Consequently, we hold that the contract in the instant case between the plaintiffs and their employer did not, by force of the National Labor Relations Act, create a right in the plaintiffs which was secured to them 'by the Constitution or laws of the United States.' Consequently, the alleged unlawful interference by the defendants with the plaintiffs' contractual rights did not give a cause of action of which a federal court would have jurisdiction in the absence of diversity of citizenship."

The relative jurisdictions of the Federal Courts and the National Labor Relations Board under the provisions of the National Labor Relations Act are expressed clearly and at length by the United States Court of Appeals for the District of Columbia in *Fur Workers Union etc. v. Fur Workers Union,* 105 F. (2d) 1 at 12 (affirmed in 308 U. S. 522, 84 L. Ed. 443).

Judge Sanborn, speaking for the Circuit Court of Appeals, Eighth Circuit, in *Donnelly Garment Co. v. International Ladies' Garment Workers' Union,* 99 F. (2d) 309 at 315, said:

> "It also seems clear to us that the only jurisdiction conferred by the National Labor Relations Act upon Federal Courts is that conferred upon Circuit Courts of Appeals with respect to enforcing, modifying and setting aside orders of the National Labor Relations Board."

Cases relied upon by petitioners are *Steele v. Louisville and Nashville, etc., R. R.,* 323 U. S. 192, 89 L. Ed. 173 (hereinafter called the *Steele* case), and *Tunstall v. Brotherhood of Locomotive Firemen, etc.,* 323 U. S. 210, 89 L. Ed. 187 (hereinafter called the *Tunstall* case).

Neither of these cases, it is respectfully submitted, even remotely suggests that the District Court had jurisdiction of the controversy disclosed by the amended complaint.

In the *Steele* case, the question presented was stated by the Chief Justice in the opening paragraph of the opinion as follows:

> "The question is whether the Railway Labor Act * * * imposes on a labor organization, acting by authority of the statute as the exclusive bargaining representative of a craft or class of railway employees, *the duty to represent all the employees in the craft without discrimination because of their race,* and, if so, whether the courts have jurisdiction to protect the minority of the craft or class from the violation of such obligation."

And in the *Tunstall* case the Chief Justice summarizes the questions involved in the following language:

> "This is a companion case to No. 45, *Steele v. Louisville & N. R. Co.,* decided this day * * * in which we answered in the affirmative a question also presented in this case. The question is whether the Railway Labor Act * * * imposes on a labor organization, acting as the exclusive bargaining representative of a craft or class of railway employees, the duty to represent all the employees in the craft *without discrimination because of their race.* The further question in this case is whether the federal court has jurisdiction to entertain a *non-diversity* suit in which petitioner, a railway employee subject to the

> Act, seeks remedies by injunction and award of damages for the failure of the union bargaining representative of his craft to perform the duty imposed on it by the Act, to represent petitioner and other members of his craft without *discrimination because of race.*"

It is apparent that the controversy in the instant case bears no resemblance to the controversy decided by this Court in the *Steele* and *Tunstall* cases. In the present case, no complaint is made by the petitioners that the Carpenters' Union, their legally constituted bargaining agent under the provisions of the National Labor Relations Act [R. 7-8], is discriminating against them or any minority group because of race, color, or for any other reason. In fact, according to allegations in the amended complaint, the petitioners and those whom they purport to represent are well satisfied with the "contracts, decisions, findings, and awards in arbitration" negotiated for them and on their behalf by their bargaining representative, the Carpenters' Union; there is, moreover, no controversy between the petitioners and any of their fellow members concerning the effectiveness, desirability, or meaning of such "contracts, decisions, findings, and awards in arbitration." The controversy here, is not, as it was in the *Steele* and *Tunstall* cases, inter-racial, but is a controversy between competing unions as to the meaning and application of certain alleged "contracts, decisions, etc." In the instant case, petitioners and those whom they purport to represent seek to have certain "contracts, decisions, etc." inter-

preted as they and all associated with them desire to have them interpreted in order that the Carpenters may have jurisdiction over the erection of sets, whereas The Alliance and The Studios interpret the said "contracts, decisions, findings, and awards in arbitration" as granting jurisdiction to The Alliance over the erection of sets, and it is the latter interpretation which has been put into effect and has been in operation for more than two years last past.

That a controversy between two competing labor unions based upon an alleged violation of one of the unions' right of collective bargaining secured by Section 7 of the National Labor Relations Act, being Section 157, Title 29, U. S. C. A., does not "arise under the * * * laws of the United States" is clearly set forth in an opinion by the Circuit Court of Appeals, Second Circuit, in *United Electrical etc. Workers v. I. B. of E. Workers,* 115 F. (2d) 488.

Another statute of the United States upon which petitioners rely is Section 41(8), Title 28, U. S. C. A., which vests jurisdiction in District Courts of the United States in suits "arising under any law regulating commerce." The controversy shown by the amended complaint does not arise out of any law *regulating* interstate commerce; the fact that a controversy may *affect* interstate commerce does not give the District Courts of the United States jurisdiction thereof.

III.

Jurisdiction Was Not Conferred Upon the District Court Either by the Fifth or the Fourteenth Amendments to the Federal Constitution nor by the Civil Rights Statutes Enacted Pursuant to the Fourteenth Amendment, for Those Amendments Are Applicable Solely to Federal and State Action, Respectively.

A. The Fifth Amendment to the Federal Constitution Is Applicable Solely to Federal Action.

Petitioners first contend that the complaint herein alleges facts constituting a violation of the Fifth Amendment to the Federal Constitution. With respect to that Amendment, however, it has long been settled that it is a limitation only upon the Federal government and does not limit individual action. In the language of *Corrigan v. Buckley,* 271 U. S. 323, 330, 70 L. Ed. 969, 972:

> "The Fifth Amendment 'is a limitation only upon the powers of the general government,' *Talton v. Mayes,* 163 U. S. 376, 382, 41 L. Ed. 196, 198, 16 Sup. Ct. Rep. 986, and is not directed against the action of individuals."

B. The Fourteenth Amendment to the Federal Constitution Likewise Applies Solely to State Action.

The Fourteenth Amendment to the Federal Constitution is also relied upon by petitioners. It was early settled in *The Civil Rights Cases,* 109 U. S. 3, 27 L. Ed. 836, however, that the Fourteenth Amendment did not

apply to individual action, but applied solely to State action. In the language of this Court in that decision,

> "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the Amendment . . ."

Similarly, in *Virginia v. Rives,* 100 U. S. 313, 25 L. Ed. 667, in referring to Section 1 of the Fourteenth Amendment the court stated at page 318 (25 L. Ed. at page 669), that

> "The provisions of the 14th Amendment of the Constitution we have quoted all have reference to state action exclusively, and not to any action of private individuals."

See, also:

United States v. Harris, 106 U. S. 629, 639, 27 L. Ed. 290, 294.

The complaint here under consideration, does not in any manner suggest the presence of State action.

C. The Civil Rights Statutes Enacted After the Civil War to Enforce the Provisions of the Fourteenth Amendment Apply to State Action Solely, or to Action Done Under Color of State Law.

(1) Section 43 of Title 8. U. S. C. A. by Express Provision Is Limited to Action Under Color of State Law.

In Paragraph VIII of their complaint, petitioners allege that, "jurisdiction of this Court is vested by virtue of . . . Section 43 . . . Title 8, United States Codes Annotated." That provision is as follows:

> *"Civil action for deprivation of rights.* Every person who, *under color of any statute, ordinance, regula-*

> *tion, custom, or usage, of any State or Territory,* subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress: R. S. 1979."

There is no intimation in the amended complaint, however, that respondents or any of them acted under color of state law. In the language of *California Oil & Gas Co. v. Miller,* 96 Fed. 12, 22:

> "The liability declared in said section 1979, 8 U. S. C. A. 43 for depriving a person of rights, privileges, or immunities secured by the constitution and laws of the United States manifestly depends upon the fact that such deprivation be under color of some statute, ordinance, etc., of a state or territory; and therefore, to constitute a cause of action under said section, the plaintiff must show, as part of his case, that the defendant claims to act under color of a statute, ordinance, etc., of a state or territory."

(2) Section 47(3) of Title 8, United States Code Annotated, Likewise Applies Only to State Action, as Contrasted to Individual Action.

Petitioners contend further that jurisdiction was vested in the lower court by virtue of Section 47(3), Title 8, United States Code Annotated, and Section 41(12), Title 28, U. S. C. A.

Section 41(12), Title 28, gives jurisdiction to the Federal District Courts:

> "Of all suits authorized by law to be brought by any person for the recovery of damages on account

of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in Section 47 of Title 8."

The foregoing statutes have been construed, as was the Fourteenth Amendment, to provide for redress against State action and not against the invasion of private rights by individuals. These principles and the authorities establishing them are summarized in *Love v. Chandler* (C.C.A. 8), 124 F. (2d) 785 at 786-787, from which we quote as follows:

"The appellant contends that his complaint states a claim under Sec. 47(2) and (3) of Title 8, U. S. C. A., authorizing actions for damages for conspiracies to deprive citizens of the equal protection of the laws or from exercising any right or privilege as a citizen of the United States, and that it also states a claim under Sec. 48 of Title 8, U. S. C. A., which authorizes the recovery of damages from any person who, having knowledge of such a conspiracy and the power to prevent it, neglects or refuses so to do. The appellant further contends that the trial court had jurisdiction of the subject matter of this action by virtue of Sec. 41(12), (13) and (14) of Title 28, U. S. C. A., which confer upon the District Courts of the United States jurisdiction of actions to recover damages for deprivation of rights in furtherance of such conspiracies as are described in Sec. 47 of Title 8, U. S. C. A.

"The trial court was of the opinion that, since this Court had held in *Love v. United States,* 108 F. (2d) 43, 49, that the right of the appellant to be employed by the Works Progress Administration was not an absolute right conferred by the Constitution or laws of the United States and that the Dis-

trict Court was without jurisdiction to review the administrative action of which the appellant had complained in that case, the complaint in the instant action, under the rule announced in *Mitchell v. Greenough,* 9 Cir., 100 F. (2d) 184, certiorari denied 306 U. S. 659, 59 S. Ct. 788, 83 L. Ed. 1056, did not state a claim for damages resulting from a conspiracy to deprive the appellant of any right or privilege dependent upon a law of the United States.

"The statutes which the appellant seeks to invoke were passed shortly after the Civil War to aid in the enforcement of the Thirteenth Amendment prohibiting State action the effect of which would be to abridge the privileges or immunities of citizens of the United States or to deprive any person of life, liberty or property without due process or to deny any person the equal protection of the law, and the Fifteenth Amendment prohibiting the denial of the right to vote on account of race or color. [Citing cases.] The statutes were intended to provide for redress against State action and primarily that which discriminated against individuals within the jurisdiction of the United States. [Citing cases.] The statutes, while they granted protection to persons from conspiracies to deprive them of the rights secured by the Constitution and laws of the United States (*United States v. Mosley,* 238 U. S. 383, 387, 388, 35 S. Ct. 904, 59 L. Ed. 1355), *did not have the effect of taking into federal control the protection of private rights against invasion by individuals.* [Citing cases.] The protection of such rights and redress for such wrongs was left with the States. [Citing cases.]

"The appellant does not seek redress because the State of Minnesota is discriminating against him, or because its laws fail to afford him equal protection.

> We have already held that *he had no absolute* right under the laws of the United States to have or retain employment by the Works Progress Administration. The appellant seeks damages because certain persons, as individuals, have allegedly conspired to injure him and have injured him by individual and concerted action. The wrongs allegedly suffered by the appellant are assault and battery, false imprisonment, *and interference with his efforts to obtain and retain employment with the Works Progress Administration.* The protection of the rights allegedly infringed and redress for the alleged wrongs are, we think within the exclusive province of the State. [Citing cases.] We agree with the trial court that the appellant has failed to state a claim upon which relief could be granted under the statutes which he has invoked. His complaint was properly dismissed."

Similarly, in *Simpson v. Geary,* 204 Fed. 507, the plaintiffs contended that they were deprived of their right to work as brakemen and flagmen by reason of an Arizona law. In holding that no Federal jurisdiction could be invoked on the facts alleged in the complaint, the Court stated as follows:

> *"The right to contract for and retain employment in a given occupation or calling is not a right secured by the Constitution of the United States, nor by any Constitution. It is primarily a natural right, and it is only when a state law regulating such employment discriminates arbitrarily against the equal right of some class of citizens of the United States, or some class of persons within its jurisdiction, as, for example, on account of race or color, that the civil rights of such persons are invaded, and the protection of the federal Constitution can be invoked to protect the individual in his employment or calling."*

In *Mitchell v. Greenough* (C. C. A. 9), 100 F. (2d) 184, 187, that Court, in construing 8 U. S. C. A. 47, stated as follows:

> "The prohibition against 'denial of the equal protection of the law' was to prevent class legislation or action."

In the present case, as previously noted, no allegation exists in the complaint and no factual situation exists of which the Court could take judicial notice that the defendants, or any of them are acting "under color of any statute, ordinance, regulation, custom or usage of any state."

A lengthy dissertation in accord with the *Chandler* decision will be found in *Love v. United States,* 108 F. (2d) 43, 45-6, in which the Circuit Court of Appeals for the 8th Circuit said:

> "Certain disputes which have arisen on various occasions in the course of our history in respect to the tenure of 'offices' and the power to make removals of incumbents or to replace them with other appointees, have called forth the utmost effort of the courts to find peaceful solution in law and reason. Several such controversies were recognized to be of far-reaching importance. They were justiciable and were settled upon profound consideration by judicial determination.
>
> *"But such determination has always been rested upon the interpretation and application of the provisions of the constitution and federal enactments. It can not be predicated upon any judicial concept concerning an able-bodied, competent and willing man's natural or inherent right to work. Unless a legal right has been defined and conferred by legislative*

authority, no justiciable controversy is present. The principles applicable are the same in the field of government work as in the broader field of private enterprise. The right to work at a particular employment must be shown to have become vested by law in the person asserting it. [citing cases.]"

A case involving the question of the right to practice law and whether it is protected by the Constitution or statutes of the United States is *Brents v. Stone, et al.,* 60 Fed. Supp. 82, from which we quote as follows on page 84:

> "Nor can the action be sustained as one to secure protection of civil rights under the Federal Constitution, for a license to practice law is not a privilege within the purview of any constitutional provision. Mitchell v. Greenough, 9 Cir., 100 F. 2d 184, rehearing denied 9 Cir., 100 F. 2d 1006; certiorari denied 306 U. S. 659, 59 S. Ct. 788, 83 L. Ed. 1056; Bradwell v. Illinois, 16 Wall. 130, 83 U. S. 130, 21 L. Ed. 442; In re Lockwood, 154 U. S. 116, 14 S. Ct. 1082, 38 L. Ed. 929."

To the same effect is *Emmons v. Smitt, et al.,* 58 Fed. Supp. 869.

Other decisions which hold adversely to the contention of petitioners that the District Court below had jurisdiction either under the Fifth or the Fourteenth Amendments to the Federal Constitution or under the Civil Rights Statutes are *Haywood v. United States,* 268 Fed. 795, in which the Circuit Court of Appeals for the Seventh Circuit said at pages 800-801, "to produce, to sell, to contract to sell to any buyer, are not rights or privileges conferred by the Constitution and laws of the United States," *United States v. Moore,* 129 Fed. 630, in which it was held that

the right of a citizen to organize persons in any pursuit was a fundamental right in all free governments, but was not a right, privilege, or immunity granted or secured to citizens of the United States by its Constitution or laws, and is left solely to the protection of the states, and *United States v. Berke Cake Co.*, 50 Fed. Supp. 311. It is true that in these actions the Courts interpreted Section 51, Title 18, U. S. C. A., and not Section 47(3) of Title 8, U. S. C. A., the latter and not the former being pleaded by petitioners as vesting jurisdiction in the District Court below. Nevertheless, the language of these two sections is almost identical and decisions under the former may properly be considered as shedding light on the interpretation which should be given the latter.

That the right to follow any of the common occupations of life and to pursue any calling, business or profession one may choose is a property right to be guarded by the proper Courts as zealously as any other form of property, that labor is property and that the laborer has the same right to sell his labor and to contract with reference thereto as any other property owner, cannot be questioned. Such rights are natural, fundamental, inalienable rights; they exist in all free governments. They are not "rights" dependent upon, secured, arising out of, nor protected by the Constitution of the United States nor any statutes or laws of the United States. When the thirteen colonies became a nation and when new states were admitted to the Union, they did not deliver into the hands of the Federal Government the protection of such pre-existing rights.

IV.

The Federal Declaratory Judgment Act Did Not Add to the Jurisdiction of the District Courts, but Merely Provided an Additional Remedy Within the Framework of the Previously Existing Jurisdiction.

Petitioners contend that the District Court had jurisdiction by virtue of the provisions of the Federal Declaratory Judgment Act (Section 400, Title 98, U. S. C. A.). It is settled, however, that such Act added nothing to the jurisdiction of the District Courts and that diversity of citizenship or some other previously established basis for federal jurisdiction must exist even though the provisions of the Federal Declaratory Judgment Act are otherwise applicable.

In the language of *Aetna Casualty & Surety Co. v. Quarles,* 92 F. (2d) 321, 323-4, "The Federal Declaratory Judgment Act (Jud. Code, Sec. 274d, 23 U. S. C. A. Sec. 400) is not one which adds to the jurisdiction of the court, but is a procedural statute which provides an additional remedy for use in those cases and controversies of which the federal courts already have jurisdiction."

The authorities holding that the Federal Declaratory Judgment Act did not confer additional jurisdiction on the federal courts are so numerous and uniform that the citation thereof would be supererogation.

V.

The Labor-Management Relations Act of 1947, Effective Approximately Five Months After the Dismissal Below, Has No Bearing on This Action.

Finally, petitioners put forth the contention that jurisdiction in the District Court was vested by virtue of the provisions of the Labor-Management Relations Act of 1947. The original complaint herein was filed on December 7, 1946. The amended complaint was filed January 3, 1947 [R. 67]. The Labor-Management Relations Act, however, did not become effective until June 23, 1947, although judgment of dismissal below had been rendered on February 25, 1947 [R. 128]. Accordingly, the Labor-Management Relations Act of 1947 could not possibly vest jurisdiction in the District Court unless it were given a retroactive effect. It is settled, however, that unless a statute is by its terms specifically given retroactive effect, its effect will solely be prospective.

> *Shwab v. Doyle,* 66 L. Ed. 747, 258 U. S. 529, 42 S. Ct. 391.

In the language of *Neild v. District of Columbia,* 110 F. (2d) 246, 254:

> "The rule is well settled that unless the contrary plainly appears a statute operates prospectively only (*Cox v. Hart,* 260 U. S. 427, 434, 43 S. Ct. 154, 67 L. Ed. 332; *Big Diamond Mills Co. v. United States,* 8 Cir., 51 F. 2d 721, 726). See generally, Smead, The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence, 20 Minn. L. Rev. 775, 778 *et seq.*); in other words, 'that a statute ought not to be construed to operate retrospectively in the absence of clear, strong, and imperative language commanding it' (*Home Indemnity Co. v. Missouri,* 8 Cir., 78 F. 2d 391, 394. See also, *United States v. Heth,* 3 Cranch,

U. S., 399, 413, 2 L. Ed. 479; *Union Pacific Co. v. Laramie Stock Yards Co.*, 231 U. S. 190, 34 S. Ct. 101, 58 L. Ed. 179; *Jones v. Fidelity & Columbia Trust Co.*, 6 Cir., 73 F. 2d 446); and if a double sense is possible that which rejects retroactive operation must be selected. (*Shwab v. Doyle*, 258 U. S. 529, 535, 42 S. Ct. 391, 66 L. Ed. 747, 26 A. L. R. 1454.)"

It is not open to dispute that Section 301(a) of the Labor-Management Relations Act of 1947 creates liabilities that did not previously exist, and that, accordingly, under uniform authority, that Section cannot be given retroactive effect. Furthermore, we submit this Act does not give District Courts jurisdiction in actions brought by individual members of a labor organization but grants jurisdiction to such Courts only in actions between labor organization or between an employer and a labor organization.

Conclusion.

Respondents, The International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada and Roy M. Brewer, respectfully pray that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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Attorneys for said Respondents.